



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 4, 2005

Mr. Carey E. Smith
General Counsel
Texas Health & Human Services Comm
P.O. Box 13247
Austin, Texas 78711

OR2005-02832

Dear Mr. Smith:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 221112.

The Health and Human Services Commission (the "commission") received a request for all documents received by the commission in response to Request for Information 529-05-039, Children's Dental Services. You claim that the requested information is excepted from disclosure under section 552.104 of the Government Code. While you also indicate that the submitted information may be excepted from disclosure under section 552.110 of the Government Code, the commission takes no position as to whether the requested information is so excepted. Rather, you state, and provide documentation showing, that you notified the interested third parties whose proprietary interests may be implicated by the request of the request for information.¹ See Gov't Code § 552.305 (permitting interested third party to submit to attorney general reasons why requested information should not be released); *see also* Open Records Decision No. 542 (1990) (determining that statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in Public Information Act ("Act") in certain circumstances). We received correspondence from Doral regarding the requested information. We have considered all exceptions claimed and have reviewed the submitted information.

¹The following third parties received notice pursuant to section 552.305: Doral Dental USA ("Doral") and Dental Benefit Partners ("Dental Benefit").

Section 552.104 of the Government Code excepts from required public disclosure "information that, if released, would give advantage to a competitor or bidder." The purpose of this exception is to protect a governmental body's interests in competitive bidding situations. *See* Open Records Decision No. 592 (1991). Section 552.104 requires a showing of some actual or specific harm in a particular competitive situation; a general allegation that a competitor will gain an unfair advantage will not suffice. *See* Open Records Decision No. 541 at 4 (1990). Section 552.104 does not protect information relating to competitive bidding situations once a contract has been awarded. *See* Open Records Decision Nos. 306 (1982), 184 (1978).

You inform this office that release of the information at this time, before a proposal to seek bids has been issued and before a contract to implement the project has been awarded, would "jeopardize the [c]ommission's bargaining position," and "would assist bidders to determine the lowest level of service that might suffice to win an award." Based on your representations and our review of the submitted documents, we conclude that the requested information may be withheld from disclosure at this time under section 552.104 of the Government Code. As we are able to make this determination, we need not address the arguments submitted by Doral.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Tex. Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Amanda Crawford
Assistant Attorney General
Open Records Division

AEC/sdk

Ref: ID# 221112

Enc. Submitted documents

c: Mr. Ty Clift
Contracts Manager
ACS State Healthcare, L.L.C.
12365-A Riata Trace Parkway
Austin, Texas 78727
(w/o enclosures)

Mr. Bryan J. Roberts
Associate Counsel
Doral Dental USA, L.L.C.
12121 North Corporate Parkway
Mequon, Wisconsin 53092
(w/o enclosures)

Mr. Mark Jolly
Vice President, Managed Care Sales
Dental Benefit Providers
800 King Farm Boulevard
Rockville, Maryland 20850
(w/o enclosures)